IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE FIRST DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE N.V. RAMANA

WRIT PETITION NO : 13945 of 2004

Between:

Mr.Bandaru Suresh Babu, s/o Sambasiva Rao,
r/o 6th Line, Brundavan Gardens, Guntur, Guntur District. **.....**

PETITIONER

AND

1.. The Assistant Provident Fund Commissioner and Authority Under

Section 7(a) of Employment Act,Sub Regional Officer, Padmavathi

Buildings, Lakshmipuram, Guntur, Guntur District-522 007.
2.. The Enforcement Officer, Sub-Regional Officer,
Employees Provident Fund Organisation, Padmavathi Buildings

Lakshmipuram, Guntur, Guntur District-522 007.
3.. Kakumanu Madhava Rao,
r/o Kakumanu Soudha, Opposite to Sanjeevi Nilayam, Kakumanuvari

Veedhi, Kothapet, Guntur, Guntur District.
4.. Parimi Sreenivasa Rao, s/o Narasaiah,
10 Lane, D.S.Nagar, Etukuru Road, Guntur, Guntur District.
5.. Manava Krishna Murthy, s/o Rama Krishnaiah,
r/o Chintapallipadu Village, via Kurnootala, Vatticherukuru Mandal,
Guntur, Guntur District.
6.. Mr.Vanukuri Venkata Subba Reddy, s/o Nagi Reddy,
7th Lane, D.No.26-34-36-C1, at Agraharam, Guntur, Guntur District.

RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ or order or direction more particularly one in the nature of writ of

certiorari call for the records and quash the impugned proceedings of the 1st respondent dt.19-7-2004 issued in L.R.No.A.P./SRO/GNT/ENF-T/33187/GV/2004 in so far as directing the petitioner to attend the enquiry with all previous lessees and all books of accounts namely Balance Sheet, profit and loss account, Ledger, salary and attendance register being illegal, arbitrary and violative of Article 14 of the Constitution of India and consequently direct the 1st respondent to dispose of the review application of the petitioner in case No.AP/33187 in accordance with law and pass

Counsel for the Petitioner:MR.T.LAKSHMI NARAYANA

Counsel for the Respondent Nos 1 & 2.: Mr. R.N.Reddy.

Counsel for respondents 3 to 6 :----NONR

The Court at the stage of admission made the following

ORDER:

The petitioner claims to have constructed a ginning mill and leased out the same to respondents 3 to 6 for different periods, and that he neither occupied nor employed anyone in the ginning mill. While so, the first respondent passed an *ex-parte* order dated 30-4-2003/9-5-2003 determining the provident fund dues for the period from December 1997 to February 2003. On the ground that he is not aware of the *ex parte* enquiry conducted and service of notices on his lessees, the petitioner filed a review petition under section 7 (b) of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (for short the Act) and the same was numbered as Case No. AP/33187. In the review petition, the petitioner contended that he is not the occupier of the mill in question, that the same was leased out to respondents 3 to 6 for the period in question and requested the authority to issue summons to respondents 3 to 6 herein who are lessees of the petitioner. Considering the said aspect, the 1st respondent issued summons to respondents 3 to 6 and the same

were served. On 22-9-2003 the petitioner and 5th respondent appeared and the matter was adjourned to 22-10-2003 and again it was adjourned to 16-7-2004. On 16-7-2004 the 1st respondent issued impugned proceedings directing the petitioner to attend the enquiry on 5-8-2004 with all previous lessees and all books of accounts viz., Balance Sheet, Profit and Loss Account, Ledger, Salary and Attendance Register. Questioning the said order, the present writ petition is filed.

Learned counsel for the petitioner submitted that the 1st respondent cannot compel the petitioner to secure the presence of his lessees and compel them to produce their account books and that the 1st respondent ought to have taken necessary steps under section 32 of C.P.C. to secure the presence of respondents 3 to 6. It is also contended that the petitioner was never in occupation of the mill in question as such the first respondent ought to have declared that the petitioner is not the employer.

Heard the learned counsel for petitioner and learned Standing Counsel for respondents 1 and 2 Mr. R.N.Reddy. Both the counsel agreed for disposal of the writ petition, at the stage of admission.

Admittedly, an *ex parte* order dated 30-4-2003/9-5-2003 was passed by the first respondent determining the provident dues, and to review the same, the petitioner filed review petition contending that he had lease out the mill to respondent Nos. 3 to 6 and that he was neither in occupation of the mill nor employed any one, and therefore, determining the provident dues payable by him, was illegal. In the course of enquiry of the review petition, the first respondent, apart from issuing summons to the petitioner, also issued summons to respondent Nos. 3 to 6. Inasmuch as the petitioner contended that he was not in possession of the mill, and that it was respondent Nos. 3 to 6, who were running the mill, the first respondent to facilitate the petitioner to substantiate his plea, while issuing summons called upon the petitioner to attend the enquiry along with the lessees and other documents. Admittedly, the summons were issued at the instance of the petitioner. Merely because under the impugned order, the petitioner was directed to produce the lessees and other documents, it does not mean that the first respondent has abdicated his duty to secure the presence of respondent Nos. 3 to 6, and more so when the petitioner has himself admitted that summons were also issued to respondent Nos. 3 to 6. The petitioner having made averments in the review petition

to the effect that he had leased out the mill to respondent Nos. 3 to 6, it is for him to prove the same, and if the petitioner is unable to secure their presence before the first respondent, it is always open to him to represent the same before the first respondent for taking appropriate action.

For the foregoing reasons, I do not see any reason warranting interference by this Court. The petitioner is at liberty to appear before the concerned authority with the available record and cooperate with it to adjudicate the matter in accordance with law. In case the petitioner approaches the first respondent authority, it has to consider the same and pass appropriate orders, in accordance with law.

Subject to above observations, the writ petition is dismissed, at the stage of admission.

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N.V.RAMANA,J

1ST DEC, 2004.

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To

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Buildings, Lakshmipuram, Guntur, Guntur District-522 007.
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7.. 2CCs to

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DATE: 1-12-2004